

THE HONORABLE MARC BARRECA  
Chapter 7  
Place: Marysville Municipal Court  
1015 State Avenue  
Marysville, WA 98270  
Hearing Date: September 12, 2018  
Time: 10:00 a.m.  
Response Date: September 5, 2018

UNITED STATES BANKRUPTCY COURT FOR  
THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In Re:

Jean Michale Guerin,

Debtor.

Chapter 7

CASE NO. 18-10438

TRUSTEE'S REPLY REGARDING  
OBJECTION TO AMENDED EXEMPTIONS

I. TRUSTEE'S REPLAY REGARDING OBJECTON TO AMENDED EXEMPTIONS

The trustee supplements his previous arguments with the following:

1. The debtor fails to demonstrate why the law of the case does not apply. The debtor has not shown "extraordinary circumstances such as where the initial decision was 'clearly erroneous and would work a manifest injustice'" as set forth in Christianson v. Colt Industries Operating Corp., 486 U.S. 800, 817, 108 S.Ct. 2166, \_\_\_, 100 L.Ed.2d 811, \_\_\_ (1988). There simply are no extraordinary circumstances. The same arguments that the debtor brings up now could have brought up before, but weren't. The debtor could have brought up the issues then and failed to do so. Pursuant to Federal Rule of Bankruptcy Procedure 8002, the 14 day deadline time to appeal the May 21, 2018 order has long since past.

TRUSTEE'S REPLY REGARDING OBJECTION TO  
AMENDED EXEMPTIONS - 1

MICHAEL P. KLEIN  
Chapter 7 Trustee  
330 Madison Ave. S., Suite 110  
Bainbridge Island, WA 98110  
(206) 842-3638

1           2. The statement “full market value (FMV)” or “100% of FMV” in Schwab v. Reilly was dicta.  
2 Justice Thomas’ statement “full market value (FMV)” or “100% of FMV” in Schwab v. Reilly, 560  
3 U.S. 770 130 S.C. 2652, 177 L.Ed.2d 234 (2010) was dicta. Dicta is simply not precedent. See  
4 Cetacean Community v. Bush, 386 F.3d 1169, 1173 (9th Cir. 2004). As such, it cannot be used as a  
5 basis to promulgate a rule, let alone something that improperly affects a substantive right. The Supreme  
6 Court held that amounts the debtor listed in the Schedule C column were facially within the limits the  
7 Bankruptcy Code prescribes and so raised no warning flags that warranted an objection by the trustee.  
8 The debtor in Schwab v. Reilly did not state “100% of FMV” (or similar language) and so it was simply  
9 not at issue.  
10

11           3. It is improper for the debtor to claim the whole asset as exempt pursuant to RCW 6.13.010  
12 RCW 6.13.010 does not exempt the entire interest in a residence, whereby it withdraws the entire fee  
13 from bankruptcy administration by the trustee. As noted earlier, RCW 6.13.010 only exempts an  
14 amount so long as it does not exceed the maximum limit of \$125,000.00. Since the debtor has claimed  
15 the Washington State exemptions, deference must be given to Washington exemption law. What the  
16 debtor is asking that this court read something in the Washington exemption law that does not exist.  
17 See In re Jacobson, 676 F.3d 1193, 1200 (9<sup>th</sup> Cir. 2012)(the court ruled that the debtor was not permitted  
18 to read out a provision that existed in a California homestead exemption statute that provided for  
19 reinvestment of homestead proceeds). Nothing in the Bankruptcy Code “limits a State's power to  
20 restrict the scope of its exemptions; indeed, it could theoretically accord no exemptions at all.” Owen v.  
21 Owen, 500 U.S. 305, 308, 111 S.Ct. 1833, \_\_\_, 114 L.Ed.2d 350, \_\_\_ (1991). “100% of FMV” (or  
22 similar language) is simply not a part of any Washington State homestead statute or common law  
23 determined by any Washington court, including any Washington Court of Appeals or Supreme Court.  
24  
25  
26  
27

TRUSTEE’S REPLY REGARDING OBJECTION TO  
AMENDED EXEMPTIONS - 2

MICHAEL P. KLEIN  
Chapter 7 Trustee  
330 Madison Ave. S., Suite 110  
Bainbridge Island, WA 98110  
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1 The debtor has not cited any Washington court case as well that would allow the debtor to exempt his  
2 entire interest in his residence.

3 4. The Fifth Circuit in In re Ayobami, 879 F.3d 152 (5<sup>th</sup> Cir. 2018) did not hold that the entire  
4 asset is removed from the bankruptcy estate if "100% of fair market value, up to any applicable statutory  
5 limit" box is checked. The 5<sup>th</sup> Circuit specifically noted: "Accordingly, it is far from obvious that the  
6 Code would "entitle" [the debtor] to clear title in the equipment even if she claimed as exempt a "full"  
7 or "100%" interest in it...." Ayobami at 154 – 155.

9 5. There is evidence that the value of the property exceeds \$125,000.00. As noted by the  
10 debtor, the debtor initially indicated that the exemption value to be \$167,000. Furthermore, the trustee  
11 believes that the value is much more and has it presently listed for \$515,000.00 under NWMLS#  
12 1291136 (street address commonly known as 8285 Peace Park Dr., Custer, WA.) See copy of listing  
13 attached as Exhibit 1. Please note that the trustee has two other parcels listed as well under NWMS#'s  
14 1290362 (address commonly known as 8225 Peace Park Dr, Custer, WA) and 1288629 (address  
15 commonly known as 8245 Peace Park Dr, Custer, WA), copies of listing attached as Exhibit 2 and 3,  
16 respectively. Kai and Hugh Rainey of Re/Max Eastside Realty were hired to sell the properties located  
17 at 8225, 8245 and 8285 Peace Park Dr, Custer WA pursuant to court order on May 21, 2018 (docket  
18 #39).  
19  
20

## 21 II. CONCLUSION

22 The Trustee seeks the entry of an order consistent with the foregoing.  
23

24 DATED this 7<sup>th</sup> day of September 7, 2018.

25 /s/ Michael P. Klein  
26 Michael P. Klein, Chapter 7 Trustee  
27

TRUSTEE'S REPLY REGARDING OBJECTION TO  
AMENDED EXEMPTIONS - 3

MICHAEL P. KLEIN  
Chapter 7 Trustee  
330 Madison Ave. S., Suite 110  
Bainbridge Island, WA 98110  
(206) 842-3638

DECLARATION

I, Michael P. Klein, hereby declare as follows:

1. I make this declaration based upon my personal knowledge and I am competent to testify hereto.
2. I am the Chapter 7 trustee in this case. I have been a Chapter 7 panel trustee since 1998. I am also an attorney and a licensed real estate designated broker 2006. I have owned and operated Bainbridge Real Properties, LLC located at 330 Madison Ave. S., Suite 110, Bainbridge Island, WA 98110 since 2006.

I declare that the foregoing is true under penalty of perjury of the laws of the State of Washington.

DATED this 7<sup>th</sup> day of September, 2018.

/s/ Michael P. Klein

Michael P. Klein

TRUSTEE'S REPLY REGARDING OBJECTION TO  
AMENDED EXEMPTIONS - 4

MICHAEL P. KLEIN  
Chapter 7 Trustee  
330 Madison Ave. S., Suite 110  
Bainbridge Island, WA 98110  
(206) 842-3638

Michael P. Klein  
Bainbridge Real Properties  
attorneyklein@hotmail.com

Exhibit 1

## Cross Property Full

**8285 Peace Park Dr, Custer 98240-9534**

MLS#: **1291136**  
County: **Whatcom**

Area: **870**

CDOM: **115**

Status: **Active**  
(05/15/2018)  
Cmty: **Blaine**

List Pr: **\$515,000**  
Org LP: **\$575,000**



### Remarks

**26.93 acres of gorgeous land in serene Custer/Birch Bay area. Main house is 2 bed/1 ba. Other structures on site may be unpermitted- buyer to verify. Fantastic location to build your dream home. Located at the end of a country road, you are moments from I-5, Birch Bay, Loomis Trail Golf Course and tons of recreational opportunities. Lightly treed with creek running along border. Two additional 4+acre parcels also available. 8225 and 8245 Peace Park Drive. By appointment only.**

### Agent Remarks

**By Appt, Call or Text PTS. Offer may be written subject to interior viewing. Subject to BK court approval. Use attached forms on MLS, allow 90 days on 22SS. Read Supplements B4 Call LA. Law Office of Wanda Nuxoll-Escrow.**

Showing Info: **MLS Keybox, See Remarks**

Offers: **Seller intends to review offers upon receipt**

### Agent/Office Information

Year Built: **2016** SqFt Sr: **Assessor**  
SqFt: **1,200** Prc/SF: **\$429.17**  
SqFt Fin: **1,200** SqFt Un:  
Lot Size: **26.930 ac / 1,173,071 sf**  
Lot Size Src: **Realist**

Agent: **Kailee Rainey (34930)**  
Office: **RE/MAX Eastside Brokers, Inc.**  
Co Agent: **Hugh W. Rainey (38086)**  
Co Office: **RE/MAX Eastside Brokers, Inc.**  
Commission: **2.5%**  
Comments: **Subject to court approval.**

Agent Ph: **(206) 681-9670**  
Office Ph: **(425) 453-7000**  
Co Ag Ph: **(206) 681-9670**  
Co Off Ph: **(425) 453-7000**  
Fax: **(425) 453-4778**

### Owner/Occupant Information

Occ Name: **M/M Guerin**  
Own Name: **Trustee for Guerin**  
Own City: **Undisclosed**

Occ Type: **Tenant**  
Own Ph: **(000) 000-0000**  
Ph Show: **(360) 961-2295**

Directions: **I-5 to Birch Bay Lynden exit, west on Birch Bay Lynden Rd. to Peace Park Dr. (Sits east of Kickerville Rd.).**

Beds: **2** BDA: Baths: **1** Full BA: **1** 3/4 BA: Half BA: Fireplaces:

### General Information

Prop Type: **Single Family** Sub Type: **Residential** Tax ID: **4001211922000000** **M**  
School Dist: **Ferndale** List Date: **05/15/2018** Expir Date:  
Mnthly Dues: Mnthly Rent:

### Additional Property Info

Ann Taxes: **\$1,282** Tax Year: **2017** Senior Expt: **No** Form 17: **Exempt**  
Map Link: **Yes** Show Address: **Yes** Prelim Title: **Yes** Common Int. Cmty:  
Internet Ad: **Yes** Prohibit Blog: **No** Allow Valuatn: **Yes** FIRPTA hold req'd: **No**  
Bank/REO: **No** 3rd Prty Appr: **Other - See Remarks** Auction: **No** Possession: **Closing, See Remarks**  
First Refusal: Potentl Terms: **Cash Out, Conventional, See Remarks** Pool:  
Construction: **No** Construction State:

### Listing Information

# Beds:	L	M	U	S	Building Cond:	Build Info:	<b>Built On Lot</b>
Bath Full:		<b>2</b>			Architecture:	Style Code:	<b>10 - 1 Story</b>
Bath 3/4:		<b>1</b>			View:	Exterior:	<b>Stucco</b>
Bath 1/2:					Water Heater	Foundation:	<b>Poured Concrete</b>
Fireplaces:					Typ/Loc:	Tot Cvr Prk:	<b>2</b>
Entry		<b>X</b>			Parking Type: <b>Garage-Attached</b>	Energy:	<b>Electric</b>
					Heat&CI Type: <b>Forced Air</b>	Basement:	<b>None</b>
					Lot Top/Veg:	Roof:	<b>Composition</b>
					Lot Details:		

### Utility Information

Sewer: **Septic**  
Water Src: **Shared Well**

Sewer Comp:  
Water Comp:

**Search Criteria**

Listing Number is 1291136  
Status is not 'Incomplete'  
Selected 1 of 1 result.

Michael P. Klein  
Bainbridge Real Properties  
attorneyklein@hotmail.com

## Cross Property Full

**8225 Peace Park Dr, Custer 98240-9534**

MLS#: **1290362**  
County: **Whatcom**

Area: **870**

CDOM: **119**

Status: **Active**  
(05/11/2018)  
Cmty: **Custer**  
Proj: **St Francis Apo Cluster**

List Pr: **\$245,000**  
Org LP: **\$275,000**



Year Built: **2005** SqFt Sr: **Realist**  
SqFt: **3,600** Prc/SF: **\$68.06**  
SqFt Fin: **3,600** SqFt Un:  
Lot Size: **4.750 ac / 206,910 sf**  
Lot Size Src: **Realist**

### Remarks

**4.75 acre parcel in serene Custer/Birch Bay. 3600 SF barn has been converted to unpermitted living space with 2 bedrooms, 2 baths and large, open rooms. Needs TLC, but great opportunity for a buyer with vision. Adjacent 4 acre vacant parcel (MLS 1288629) and 26 acre with livable building (parcel 400121-1922000-0000) are also available.**

### Agent Remarks

**By Appt, call PTS with at least 24 hours notice. Subject to BK court & lien holder approval. \$20K BK fee incl in LP - paid by buyer. Use attached forms on MLS, allow 90 days on 22SS. Read Supplements B4 Call LA. Law Office of Wanda Nuxoll-Escrow. Showing Info: **MLS Keybox, See Remarks**  
Offers: **Seller intends to review offers upon receipt****

### Agent/Office Information

Agent: **Kailee Rainey (34930)** Agent Ph: **(206) 681-9670**  
Office: **RE/MAX Eastside Brokers, Inc.** Office Ph: **(425) 453-7000**  
Co Agent: **Hugh W. Rainey (38086)** Co Ag Ph: **(206) 681-9670**  
Co Office: **RE/MAX Eastside Brokers, Inc.** Co Off Ph: **(425) 453-7000**  
Commission: **2.5%** Fax: **(425) 453-4778**  
Comments: **Subject to court approval.**

### Owner/Occupant Information

Occ Name: **M/M Rushing** Occ Type: **Tenant**  
Own Name: **Trustee for Guerin** Own Ph: **(000) 000-0000**  
Own City: **Undisclosed** Ph Show: **(360) 270-3961**

Directions: **Birch Bay Lynden Road, east of Kickerville road go North on Peace park Drive.**

Beds: **4** BDA: Baths: Full BA: 3/4 BA: Half BA: Fireplaces:

### General Information

Prop Type: **Single Family** Sub Type: **Residential** Tax ID: **4001211121590000**   
School Dist: **Ferndale** List Date: **05/11/2018** Expir Date:  
Mnthly Dues: Mnthly Rent:

### Additional Property Info

Ann Taxes: **\$2,827** Tax Year: **2017** Senior Expt: **No** Form 17: **Exempt**  
Map Link: **Yes** Show Address: **Yes** Prelim Title: **Yes** Common Int.  
Internet Ad: **Yes** Prohibit Blog: **No** Allow Valuatn: **Yes** Cmty:  
Bank/REO: **No** 3rd Prty Appr: **Remarks, Short Sale** Auction: **No** FIRPTA hold req'd: **No**  
First Refusal: Potentl Terms: **Cash Out, See Remarks** Possession: **Closing, See Remarks**  
Construction: **No** Construction State: Pool:

### Listing Information

# Beds:	L	M	U	S	Building Cond:	Build Info: <b>Built On Lot</b>
Bath Full:		<b>3</b>	<b>1</b>		Architecture:	Style Code: <b>12 - 2 Story</b>
Bath 3/4:					View:	Exterior: <b>Cement Planked, Stucco</b>
Bath 1/2:					Water Heater	Foundation: <b>Poured Concrete</b>
Fireplaces:					Typ/Loc:	Zone Juris:
Entry		<b>X</b>			Zoning Code: <b>R10A</b>	Tot Cvr Prk: <b>0</b>
					Parking Type: <b>None</b>	Energy: <b>Electric</b>
					Heat&CI Type: <b>Baseboard, Forced Air</b>	Basement: <b>None</b>
					Lot Top/Veg: <b>Brush, Fruit Trees, Garden Space, Level, Pasture</b>	Roof: <b>Metal</b>
					Lot Details:	

Site Feat: **Propane, RV Parking**

### Utility Information

Bus Line: **Septic** Bus Route #: Power Comp: **PSE**  
Sewer: **Community, Individual Well** Sewer Comp:  
Water Src: **Community, Individual Well** Water Comp: **Water Share Needs**

**Search Criteria**

Listing Number is 1290362  
Status is not 'Incomplete'  
Selected 1 of 1 result.



Michael P. Klein  
Bainbridge Real Properties  
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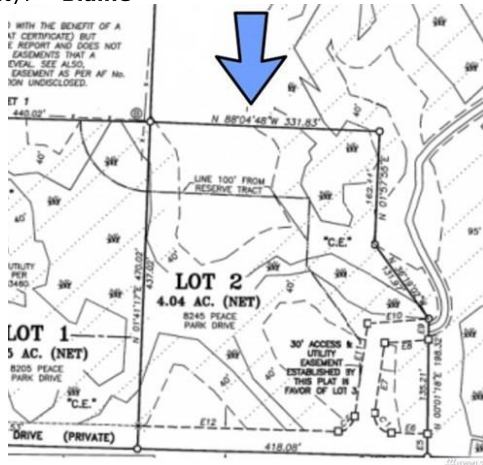
## Cross Property Full

**8245 Peace Park Dr, Custer 98240-9534**

MLS#: **1288629** Status: **Active**  
(05/11/2018)  
Area: **870 - Ferndale/Custer**  
Commy: **Blaine**

CDOM: **119**  
County: **Whatcom**

LP: **\$105,000**  
OLP: **\$125,000**



Remarks

**Build your dream home! Gorgeous and level 4 acres in serene Custer/Birch Bay area. Adjacent parcels also for sale. Minutes to I-5, Birch Bay and all kinds of recreational opportunities!**  
**Offers: Seller intends to review offers upon receipt**

### Agent/Office Information

Agent: **Kailee Rainey**  
Co Agent: **Hugh W. Rainey**  
Office: **RE/MAX Eastside Brokers, Inc.**

Agent Ph: **(206) 681-9670 (Business)**  
Co Agent Ph: **(206) 681-9670 (Home)**  
Office Ph: **(425) 453-7000**  
Fax: **(425) 453-4778**  
Entered By:

Comm: **2.5**  
Comments: **Subject to court approval.**

### General Information

Lot Size: **4.040 ac/175,982 sf**  
Elementary: **Custer Elem**  
Snr High: **Ferndale High**  
List Dt: **05/11/2018**  
Lot #:   
Owner Nm: **Trustee for Guerin**  
FIRPTA: **No**  
Agent Rmks: **Subject to BK court approval, NOT SHORT, no BK fee. Use attached forms on MLS, allow 90 days on 22SS. Read Supplements B4 Call LA. First American Title. Law Office of Wanda Nuxoll-Escrow.**  
Directions: **I-5 to Birch Bay Lynden exit, west on Birch Bay Lynden Rd. to Peace Park Dr. (Sits east of Kickerville Rd.).**

### Section Above Price

Map Link: **Yes** Prlm Ttl: **Yes** Show Pub: **Yes**  
Internet Ad: **Yes** Pro Blog: **No** Allow VI: **Yes**  
Bank/REO: **No** 3rd Prty: **Other - See Remarks, Short Sa**  
Own City/St: **Undisclosed** Subd/Prj: **Blaine** Auction: **No**

### Listing Information

Ann Taxes: Tax Year: Sketch: **No** Form 17: **Exempt**  
First Refusal: Comm Int  
Cmty: HOA Dues Incl:  
Zone Class: **Agricultural, Residential** Zone Jur: **County**  
Possession: **Closing, See Remarks** Style Cd: **41 - Res-Over 1 Acre**  
Terms: **Cash Out, See Remarks**

### Site Information

Septic Inst: **No** # Beds Apr: Rpts/Docs: **CCRs, Road Agreement, Wetland Delineation**  
Lot Top/Veg: **Rolling** Improv: **Outbuilding(s)**  
Water: **Available** Electricity: **Available**  
Sewer: **Not Available** Gas: **Not Available**  
View: **Territorial**  
Road Info: **Access Easement, Gravel, Privately Maintained**  
Lot Dtls: **Dead End Street, Open Space, Secluded**  
Prop Feat: **Dune Grasses, Evergreens, Heavily Forested, ORV Trails, Pasture Land, Riding Trails, Stream/Creek**

**Search Criteria**

Listing Number is 1288629  
Status is not 'Incomplete'  
Selected 1 of 1 result.